

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRENT BAILEY,

Defendant.

4:12-CR-3034

ORDER

This matter is before the Court on documents presented by the defendant that the Court has, at the direction of the Clerk of Court of the U.S. Court of Appeals for the Eighth Circuit, filed as a notice of appeal ([filing 182](#)). Because the defendant was previously found to be eligible for appointment of counsel, he would normally be allowed to proceed on appeal *in forma pauperis* without further authorization. [Fed. R. App. P. 24\(a\)\(3\)](#). But an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that the appeal is not taken in good faith. [28 U.S.C. § 1915\(a\)\(3\)](#); [Fed. R. App. P. 24\(a\)\(3\)\(A\)](#).

An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. [Coppedge v. United States](#), 369 U.S. 438, 445 (1962); [Ellis v. United States](#), 356 U.S. 674, 674 (1958). An indigent appellant should be allowed to proceed *in forma pauperis* unless the issues raised are so frivolous that the appeal would be dismissed in the case of a non-indigent litigant. [Coppedge](#), 369 U.S. at 447; [Ellis](#), 356 U.S. at 675. An appeal is frivolous where none of the legal points are arguable on their merits—when the result is obvious or the appellant's argument is wholly without merit. See, [Neitzke v. Williams](#), 490 U.S. 319, 325 (1989); [Misischia v. St. John's Mercy Health Sys.](#), 457 F.3d 800, 806 (8th Cir. 2006).

The Court has carefully examined the defendant's filing as it relates to the Court's Memorandum and Order of October 18, 2017 ([filing 181](#)), which is the order the defendant seeks to have reviewed. The Court finds no legal points that have any arguable merit. The defendant continues to reassert his baseless claim that the judgment is erroneous because the indictment charged him conjunctively, but he was convicted disjunctively. The Court has repeatedly explained why that was not improper. See [filing 158](#) (citing *United States v. Thompson*, 560 F.3d 745, 748 (8th Cir. 2009)). The defendant seems to be undeterred, but that does not make his point arguable.


Accordingly, the Court finds that the defendant's appeal is not taken in good faith, and that he is not entitled to proceed *in forma pauperis*.

IT IS ORDERED:

1. The defendant's appeal is not taken in good faith, and he is not entitled to proceed *in forma pauperis* on appeal.
2. The Clerk of the Court is directed to forward a copy of this order to the Eighth Circuit Court of Appeals.

Dated this 7th day of November, 2017.

BY THE COURT:



John M. Gerrard
United States District Judge